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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,158	11/13/2001	Earl J. Votolato	SPELL-004C	8649

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EXAMINER

DRUAN, THOMAS J

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/010,158

Applicant(s)

VOTOLATO, EARL J.

Examiner

Thomas J. Druan, Jr.

Art Unit

3724

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-6.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

  
Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: the Examiner considers the Chen reference to be applicable. Specifically, Applicant argues that the first and second arms of Chen are not resiliently connected; however, it is an inherent property of Chen that the first and second arms are resiliently connected since the blade of Chen must contact the inner surface of the opposing arm in order to function while allowing the arms to return to an unbiased state as seen in Figure 1 so that the device can be used more than one time. Plastic deformation of the device, resulting in the arms remaining together after slitting a bag for the first time, would render the device useless. Clearly, the Chen device is not a one-use device. Applicant also contends that Chen does not disclose a "transverse laterally-open concave groove there across for receiving therein the blade tip and a continuously moving bag edge." However, Figure 3 of the Chen reference clearly shows a rectangular groove opposite the cutting blade which must aid in the puncturing of a bag inserted between the blade and the groove. One skilled in the art would easily recognize the function of a groove opposite a pointed blade to be advantageous, if not necessary, to cause sufficient penetration of the blade through the entire thickness of a bag so as to allow a bag to be slit to the extent the device was intended. Evidence of the correctness of the Examiner's position that the alluded to structure is a groove can be seen with the previously cited references US 4,711,031 to Annello, having a blade 5 opposite groove 7 to "[ensure] that the blade cuts completely through the envelope" (column 3, lines 8-9), and US 5,007,171 to Horning, Jr. wherein a blade 29 opposes a groove 28 "to receive the ... knife therewithin" (column 4, lines 44-45). It is also to be noted that these prior art devices are not single or one-time use bag slitters and disclose resiliently connected arms. As for the "transverse laterally-open concave" aspect of the groove of Chen, the groove clearly extends away from the blade (i.e., is concave), and the groove can be seen from the front view of the device as evidenced by Figure 3 (i.e., is laterally-open), and the groove is lying across from (i.e., is transverse to) the blade. Furthermore, Gilman is used properly to teach having a slitting device made from a single piece of material except for a metal blade, and was in no way used to address any deficiencies of resiliency or a groove. Therefore, the Examiner maintains the current rejection. The request for a teleconference is duly noted, and Applicant is invited to call the Examiner at 703-308-4200 at any time.